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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,146	01/04/2002	Charles W. Berthoud	C.BERTHOUD 22	2400

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EXAMINER

CHEN, TSE W

ART UNIT PAPER NUMBER

2116

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/041,146

Applicant(s)

BERTHOUD, CHARLES W.

Examiner

Tse Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. It is hereby acknowledged that the following papers have been received and placed of record in the file: Amendment dated March 22, 2005.
2. Claims 1-21 are presented for examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 7, 8, 11, 14, 15, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolbet et al., US Patent 6308215, hereinafter Kolbet, in view of Fukunaga et al., US Patent 5469746, hereinafter Fukunaga.

5. In re claim 1, Kolbet discloses a performance [speed] indication system for use with a Universal Serial Bus {USB} signal [col.2, ll.57-63], comprising:

- A rate discrimination subsystem [inherently, part of logic block b1 provides a determination of speed] configured to provide a determination of a data transfer rate of said USB signal corresponding to a full-speed operation [low speed] and a high-speed operation [col.8, l.56 – col.9, l.6; col.12, ll.7-40].
- A condition indication subsystem [inherently, part of logic block b1 provides the signal] coupled to said rate discrimination subsystem and configured to indicate said data transfer rate [speed indicator signal SPD] [col.8, l.56 – col.9, l.6].

6. Kolbet did not disclose explicitly a way to indicate the data transfer rate to a user.
7. Fukunaga discloses a performance indication system [electromagnetic flow meter] comprising a condition indication subsystem [104] configured to indicate a transfer rate [flow rate] to a user [via visual display 140] [col.7, l.59 – col.8, l.19].
8. It would have been obvious to one of ordinary skill in the art, having the teachings of Kolbet and Fukunaga before him at the time the invention was made, to modify the performance indication system taught by Kolbet to include the condition indication subsystem of Fukunaga, in order to obtain the performance indication system comprising a condition indication subsystem coupled to said rate discrimination subsystem and configured to indicate said data transfer rate to a user. One of ordinary skill in the art would have been motivated to make such a combination as it provides a very well known way to output the operating status [Fukunaga: col.7, l.59 – col.8, l.19].
9. As to claims 4, 11, and 18, Fukunaga discloses a system wherein said condition indication subsystem [104] employs a visual display to indicate said data transfer rate to said user [140] [col.7, l.59 – col.8, l.19].
10. As to claims 7 and 21, Kolbet discloses, wherein said rate discrimination subsystem employs a control signal [D+, D-] associated with a USB signal for said determination of said data transfer rate [col.4, ll.22-55].
11. In re claims 8 and 14, Kolbet and Fukunaga taught each and every limitation of the claim as discussed above in reference to claims 1 and 7. Claims 1 and 7 are directed to the performance indication system implementing the method of claims 8 and 14. Kolbet and Fukunaga taught the

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system as set forth in claims 1 and 7. Therefore, Kolbet and Fukunaga also taught the method as set forth in claims 8 and 14.

12. In re claim 15, Kolbet and Fukunaga disclose a computer system [fig. 1], comprising each and every limitation of a performance indication system as discussed above in reference to claim 1. Kolbet further discloses the computer system comprising a central processing unit [computer unit] associated with a keyboard, a pointing device [mouse] and a monitor [virtual reality device] [col.3, ll.37-51].

13. Claims 2, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolbet and Fukunaga as applied to claims 1, 8 and 15 above, and further in view of Heidmann et al., US Patent 4402271, hereinafter Heidmann.

14. Kolbet and Fukunaga disclose each and every limitation of the claim as discussed above in reference to claims 1, 8 and 15. Kolbet did not disclose explicitly that the performance indication system is contained in the USB cable assembly.

15. Heidmann discloses a performance indication system [detection device] wherein at least a portion of the performance indication system is contained in a cable assembly [1] [col.4, ll.7-22; conductors are part of detection device].

16. It would have been obvious to one of ordinary skill in the art, having the teachings of Kolbet, Fukunaga, and Heidmann before him at the time the invention was made, to modify the performance indication system taught by Kolbet to include the teachings of Heidmann, in order to obtain the performance indication system wherein at least a portion of said performance indication system is contained in a USB cable assembly. One of ordinary skill in the art would

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have been motivated to make such a combination as it provides a way to package the detection and transmitting media in one unit [Heidmann: col.4, ll.7-22].

17. Claims 3, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolbet and Fukunaga as applied to claims 1, 8 and 15 above, and further in view of Wooten, US Patent 6542946.

18. Kolbet and Fukunaga disclose each and every limitation of the claim as discussed above in reference to claims 1, 8 and 15. Kolbet did not disclose explicitly that the performance indication system is contained in a peripheral device.

19. Wooten discloses a performance indication system [hub 172] wherein at least a portion of said performance indication system is contained in a peripheral device [e.g., monitor 158] [col.6, ll.10-27].

20. It would have been obvious to one of ordinary skill in the art, having the teachings of Kolbet, Fukunaga, and Wooten before him at the time the invention was made, to modify the performance indication system taught by Kolbet to include the teachings of Wooten, in order to obtain the performance indication system wherein at least a portion of said performance indication system is contained in a peripheral device. One of ordinary skill in the art would have been motivated to make such a combination as it provides a way to monitor a peripheral device [Wooten: col. 6, ll.10-27].

21. Claims 5, 12, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolbet and Fukunaga as applied to claims 1, 8 and 15 above, and further in view of Davis et al., US Patent 5365577, hereinafter Davis.

22. Kolbet and Fukunaga disclose each and every limitation of the claim as discussed above in reference to claims 1, 8 and 15. Kolbet did not disclose explicitly that the condition indication subsystem employs an audio device.

23. Davis discloses a system wherein said condition indication subsystem [modem controller 346] employs an audible device [tone generator] to indicate a data transfer rate [bps] to a user [1412.5 and 2312.5 Hz distinguishing the different data rates are well within the human audible range of about 20-20000 Hz] [col.22, ll. 1-28].

24. It would have been obvious to one of ordinary skill in the art, having the teachings of Kolbet, Fukunaga, and Davis before him at the time the invention was made, to modify the performance indication system taught by Kolbet to include the audible device of Davis, in order to obtain the performance indication system wherein at least a portion of said condition indication subsystem employs an audio device. One of ordinary skill in the art would have been motivated to make such a combination as it provides a way to output the operating status [Davis: col. 22, ll. 1-28].

25. Claims 6, 13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolbet and Fukunaga as applied to claims 1, 8 and 15 above, and further in view of Kitagawa, US Publication 20030026183.

26. Kolbet and Fukunaga disclose each and every limitation of the claim as discussed above in reference to claims 1, 8 and 15. Kolbet did not disclose explicitly that the determination of the data transfer rate is based on an outcome of a chirping process.

27. Kitagawa discloses a performance indication system wherein the determination of a data transfer rate [speed] is based on an outcome of a chirping process [0032-0033].

28. It would have been obvious to one of ordinary skill in the art, having the teachings of Kolbet, Fukunaga, and Kitagawa before him at the time the invention was made, to modify the performance indication system taught by Kolbet to include the teachings of Kitagawa, in order to obtain the performance indication system wherein said determination of said data transfer rate is based on an outcome of a chirping process. One of ordinary skill in the art would have been motivated to make such a combination as it provides a way to determine a data transfer rate for correct operation [Kitagawa: 0006-0007].

Response to Arguments

29. All rejections of claim limitations as filed prior to Amendment dated March 22, 2005 not argued in entirety or substantively in response filed as said Amendment have been conceded by Applicant and the rejections are maintained from henceforth.

30. Applicant's arguments with respect to claims 1, 8, and 15 have been considered but are moot in view of the new ground(s) of rejection.

31. Applicant's arguments with respect to claims 4, 11, and 18 have been fully considered but they are not persuasive. Applicant alleges that "the cited combination of Kolbert and Fukunaga does not teach or suggest indicating a data transfer rate to a user... one skilled in the art would not be motivated to combine Fukunaga with Kolbet since Kolbet is directed to extending USB cables and Fukunaga is directed to improved electromagnetic flow meters". Firstly, Applicant correctly concedes that Fukunaga does disclose a display that "provides a visual output of an electromagnetic flow meter". Examiner reminds Applicant that a display is used to convey information to a user. Secondly, Applicant incorrectly alleges that "Fukunaga has not been cited to teach indicating a data transfer rate to a user but to teach at least a portion of a performance

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indication system that is contained in a peripheral device”. Examiner invites Applicant to review page 5 of the previous Office Action and note that Fukunaga was cited to teach “a system wherein at least a portion of a condition indication subsystem [104] employs a visual display [140]”. Thirdly, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case, the rejection was based on a combination of Kolbet [indicating a data transfer rate] and Fukunaga [indicating a transfer rate to a user]. Finally, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to employ a visual display in order to indicate information to a user is knowledge available to one of ordinary skill in the art, and is explicitly cited in Fukunaga as for providing a way to output an operating status [col.7, l.59 – col.8, l.19].

32. All other claims were not argued separately.

Conclusion

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33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tse Chen whose telephone number is (571) 272-3672. The examiner can normally be reached on Monday - Friday 9AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571) 272-3670. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

**LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tse Chen
April 20, 2005



LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100